

September 14, 1995

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No. 95-19

Re: Request for Advisory Opinion No. 95-1A-0801-1, Post Employment Options

Dear \*\*\*\*\*.

You ask if, after retiring from City employment, the Code of Ethics prohibits you from doing any of the following: (1) working as a "temporary" or "part-time" City employee doing the same work you do now; (2) working as a consultant for the City, as a sole proprietor, doing the same work; or (3) responding to a Request For Proposal while you are a City employee, to perform the same work after you have retired. The brief answer is no, the Code does not prohibit any of the above.

#### **STATEMENT OF FACTS**

\*\*\*\*\* has been a City employee for 23 years. He holds one of the two real estate appraiser positions in the City. Due to health problems, he plans to retire in January 1996. He would like to work part-time, after retirement. He is currently working for the Parks Department in the Open Space Program, which appears to have another three years of work to be done.

\*\*\*\*\* asks the following questions:

- (1) Can he work part-time for the City as a "Temporary" or "Part-time" employee, in the same capacity, on the same program in which he is now working?
- (2) If "no", why not?
- (3) If "yes," :
  - a. Would he be limited to any particular number of hours?
  - b. Could the hours fluctuate, depending on the willingness of the Parks Department to pay the wages?
  - c. Would he have to pay all of the benefits that the City now pays?
- (4) Can he work as a consultant for the City, as a sole proprietor, on the same project on which he worked before leaving City employment? and
- (5) Can he respond to a Request For Proposal for appraisers which the City plans to publish soon, while he is a City employee, with the knowledge and disclosure that he intends to retire after January 1996 and will not be available for assignments until after he retires?

## **ANALYSIS**

### **1. The Code of Ethics Does Not Prohibit A Former City Employee From Returning To City Employment, Involving The Work Or Matters In Which He Had Been Involved As A City Employee.**

The Code of Ethics prohibits City officers and employees who leave City employment from assisting others in matters in which they had been involved as City employees. SMC 4.16.075(B)(1) provides that no former officer or employee shall, during the period of one (1) year after leaving city office or employment:

1. Assist any person in proceedings involving the agency of the City with which he/she was previously employed, or on a matter in which he or she was officially involved, participated or acted in the course of duty;

2. Represent any person as an advocate in any matter in which the former officer or employee was officially involved while a City officer or employee.

The Code defines “assist any person” to mean assist another person. SMC 4.16.030(B).

Therefore, the Code does not prohibit, for any period, a former City employee from returning to the City to perform the same work or work on the same matter in which the former employee had been involved as a City employee.

Your questions regarding whether you could return as a “Temporary” or “Part-Time” employee, whether your hours would be limited, and whether you would have to pay for your benefits are not within our jurisdiction. These appear to be properly addressed to the Department of Personnel and the Retirement Department.

### **2. A Former City Employee May Contract With The City To Perform The Work Or To Act On The Matters In Which The Employee Was Involved As A City Employee, So Long As The Employee Does Not Use City Funds Or Facilities To Acquire The Contract And Does Not Attempt To Influence The City’s Selection Of A Contractor.**

Applying the analysis discussed above, the Code does not prohibit a former City employee from contracting with the City, as a sole proprietor, to do the same work the former employee had done or to work on the matters in which the former employee had been involved as a City employee. Since the Code prohibits assisting another, however, for one year after leaving City employment, the former employee may not work as a subcontractor or employee of another to perform the work or be involved in the matters, in which the former employee was involved during City employment.

The Code prohibits City employees from using City funds or facilities for other than a City purpose and it prohibits City employees from attempting to influence the City to conduct business with entities in which they have an interest. SMC 4.16.070(2)(b) provides in relevant part that no current City officer or employee shall:

Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any City funds or City property, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose.

SMC 4.16.070(2)(d) provides that no current City officer or employee shall:

Regardless of prior disclosure thereof, have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in a business entity doing or seeking to do business with the City, and influence or attempt to influence the selection of, or the conduct of business with, such business entity by the City.

In Op Sea Ethics & Elects Comm'n 39 (1992), we held that the primary purpose of City funds and facilities is to conduct the public's business. Conducting a private business is not a City purpose. Therefore, a City employee may not use City paid time or facilities to develop a response to a request for proposal, even if it is a City request. Such a response is for personal gain, not the conduct of public business.

In Op Sea Ethics & Elects Comm'n 22 (1992), we advised that a part-time Parks employee may submit a response to a request for proposal, but he may not do anything more than other respondents to influence the selection of his proposal.

As in those cases cited above, \*\*\*\*\* may not use City paid time or facilities to prepare his response to a request for proposal or take any other measures not available to other competitors to influence the City to select his proposal.

### **3. For One Year After Leaving City Employment, The Code Prohibits Former Employees Who Were Involved In Establishing The Parameters Of A Project From Competing In A Selection Process For The Project.**

The Code of Ethics prohibits participation in a competitive process for one year after leaving City employment, where the former employee had been involved in setting up the project, as an employee. SMC 4.16.075(B)(3) provides that no former officer or employee shall, during the period of one (1) year after leaving City Office or employment:

Participate as a competitor in any competitive selection process for a City contract in which he or she assisted the City in determining the project or work to be done or the process to be used.

In Op Sea Ethics & Elects Comm'n 22 (1992), we advised the part-time City employee, who intended to submit a proposal to a request for proposal, that he must refrain from providing any input into the scope of work, selection criteria or selection process for that proposed request. As in that case, \*\*\*\*\* may not assist in developing the request for proposal for appraisers, if he intends to submit a proposal.

## CONCLUSION

The Code of Ethics does not prohibit a former City employee from returning to City employment, involving the work or matters in which he had been involved as a City employee. It only prohibits assisting another, for twelve months after termination, on matters in which the employee had been involved. Likewise, the Code does not prohibit a former City employee from contracting with the City to perform the work or to act on the matters in which the employee had been involved as a City employee, so long as the employee does not use City funds or facilities to acquire the contract and does not attempt to influence the City's contractor selection. For one year after leaving City employment, however, the Code prohibits former employees who were involved in establishing the parameters of a project from competing in a selection process for the project.

The Commission's advisory opinion is based upon the facts as stated above. The Commission does not investigate the facts. Please be aware that modification of the facts might cause the Commission to reach a different conclusion. In addition, Commission advisory opinions are narrowly drawn to interpret the ordinances that the Commission is authorized to administer. They do not address whether the proposed action is prudent, good public policy or effective management practice.

## FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION

Carolyn M. Van Noy,  
Executive Director

This action was reviewed and approved by the Commission at its special meeting of September 13, 1995. The Commission members voting to take this action were:

Timothy Burgess, Chair  
Marc A. Boman  
Daniel J. Ichinaga  
John A. Loftus

Not in attendance were:  
Lue Rachelle Brim-Atkins  
Catherine L. Walker  
Jeri A. Rowe